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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

In the Matter of:

Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
(Cambridge and St. Michaels, MD)

MM Docket No. 92-291  
RM-8133

To: The Commission

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**OPPOSITION TO APPLICATION FOR REVIEW**

Prettyman Broadcasting Company, Inc., licensee of Station WICO-FM, Salisbury, Maryland ("Prettyman"), by its attorneys, hereby opposes the *Application for Review* filed August 24, 1995, by CWA Broadcasting, Inc. ("CWA"). CWA seeks to have the full Commission review the *Report and Order* by the Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau, dismissing CWA's *Petition for Rulemaking* to reallocate Channel 232A from Cambridge to St. Michaels, Maryland, and to modify the construction permit for Station WFBR to specify the new community of license. See *Report and Order*, MM Docket No. 92-291, 9 FCC Rcd 2767 (1994). CWA's *Application for Review* should be dismissed on substantive grounds, as CWA has not shown that the Mass Media Bureau's ruling raises a novel question of law or policy or conflicts with Commission precedent.

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### Background

As stated before by Prettyman, the background of this proceeding has been laboriously traced in previous pleadings.<sup>1/</sup> For the sake of brevity, the following summary is provided: Following an FCC comparative hearing, CWA received a permit for an FM Station on Channel 232A, Cambridge, Maryland. The Administrative Law Judge cited three reasons for awarding CWA the permit over its six competitors: (1) 100% integration; (2) minority ownership; and (3) community activity. The Administrative Law Judge did not assign separate weights to each of these three qualitative enhancements, but treated them as a package justifying CWA's decisionally significant preference.

CWA petitioned the Commission to reallocate the channel assigned to its unbuilt facility, Channel 232A in Cambridge, to St. Michaels, Maryland. The Commission dismissed CWA's Petition in *Report and Order*, MM Docket No. 92-291, 9 FCC Rcd 2767 (1994). The Chief, Policy and Rules Division, Mass Media Bureau, denied CWA's Petition for Reconsideration of its decision in *Memorandum Opinion and Order*, DA 95-1594, released July 25, 1995.

### The Mass Media Bureau Rightly Decided Against the Reallocation

CWA fails to present a question of law or policy justifying full Commission review of the staff decisions. Under established Commission precedent, CWA bore the burden of proving a negative to support reallocation of Channel 232A to St. Michael's -- that CWA had not "received in a comparative hearing a decisionally significant preference that would not

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<sup>1/</sup> Prettyman reincorporates by reference its previous pleadings and comments in this docket.

have been granted had the comparative contest been for a station in the new proposed community."<sup>2/</sup> CWA failed to make its proof. Now, CWA merely repeats its argument that reallocation is justified because one issue -- "community activity" -- was not "decisionally significant." CWA also repeats its argument that it is entitled to a credit for "community activity" in its now-proposed location. Both of these arguments were made to the Mass Media Bureau in CWA's original request for allotment and its petition for reconsideration. Both arguments were rejected by the Mass Media Bureau. Both arguments continue to be wholly without merit.

First, the "community activity" preference that helped CWA secure the construction permit was related to the Cambridge community. The comparative hearing reduced the competing applicants to two: Mr. Robert L. Purcell, a broadcast engineer, who had previously owned interests in broadcast stations in other communities and in Pocomoke City, Maryland; and Mr. Charles W. Adams, Jr., a radio announcer and personality, who is black, and "claims to have participated in civic activities in the service area."<sup>3/</sup> Both of these applicants were granted integration credit. Yet, in awarding the permit to CWA, the ALJ made it clear that the difference between Mr. Adams and Mr. Purcell was minority status and "past civic activities within the service area."<sup>4/</sup> Some portion of CWA's preference in the comparative hearing was directly connected to the civic activities asserted for the service

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<sup>2/</sup> Memorandum Opinion and Order on Reconsideration, MM Docket 88-52, 5 FCC Rcd 7094, 7097 (1990).

<sup>3/</sup> Initial Decision, 4 FCC Rcd 6481, 6484-85, ¶¶ 28-30.

<sup>4/</sup> See Big Bay Broadcasting, 4 FCC Rcd 4676, 4686 (1989).

area it now seeks to abandon. Thus, Commission precedent set forth in the *Memorandum Opinion and Order on Reconsideration* in MM Docket 88-526 compels rejection of CWA's request to reallocate Channel 232A to St. Michaels, Maryland.

Second, CWA cannot demonstrate that it would have received a "community activity" preference had the comparative hearing been for a channel at St. Michaels. The record in the hearing proceeding concerning Channel 232A at Cambridge does not show that CWA had any documented involvement in civic activities in St. Michaels. CWA's argument that one of the activities credited in the Cambridge comparative proceeding falls within the 1 mV/m contour of a proposed St. Michaels operation is irrelevant. The factual record in the hearing proceeding is closed. The Commission can not parse the factual record and the conclusions of the Administrative Law Judge to reevaluate now whether CWA's involvement in civic activities in St. Michaels would have justified award of the Cambridge permit to CWA over the competing applicants.

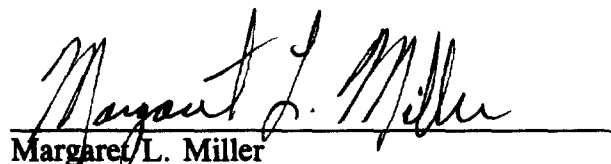
#### CWA Fails To Meet The Commission's Standards For Review

CWA has not shown that the action of the Mass Media Bureau involves a novel question of law or policy for the Commission. CWA has not shown that the staff rulings in this proceeding are in conflict with case law and established Commission precedent. There is no basis for Commission review of its staff's action pursuant to delegated authority.

**CONCLUSION**

For all of these reasons, CWA's Petition for Reconsideration should be rejected.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Margaret L. Miller", written over a horizontal line.

Margaret L. Miller  
Counsel for Prettyman Broadcasting Company, Inc.

Dow, Lohnes & Albertson  
1255 23rd Street, N.W.  
Washington, D.C. 20037

September 8, 1995

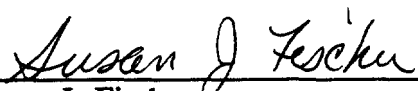
**CERTIFICATE OF SERVICE**

I, Susan J. Fischer, a secretary at Dow, Lohnes & Albertson, do hereby certify that a copy of the foregoing "Opposition to Application for Review" was either hand delivered or mailed, postage prepaid by first class United States mail, this 8th day of September, 1995 to the following:

Dennis J. Kelly, Esq.  
Cordon & Kelly  
Post Office Box 6648  
Annapolis, MD 21401  
Counsel for CWA Broadcasting

\*Roy J. Stewart  
Chief, Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 314  
Washington, D.C. 20554

\*John A. Karousos  
Acting Chief, Allocations Branch  
Federal Communications Commission  
1919 M Street, N.W.  
Room 8322  
Washington, D.C. 20554

  
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Susan J. Fischer

\*By Hand Delivery